



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

#### **SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

**C. W. PROPERTIES, L.L.C.**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) between the State Water Control Board and C. W. Properties, L.L.C. for the purpose of resolving certain alleged violations of environmental laws and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "C. W. Properties" or "Company" means C. W. Properties, L.L.C. a Virginia limited liability company in good standing which owns and is developing property known as the Ben Leake Plaza property.
7. "Site" means the Ben Leake Plaza property which is located off of Route 29 North, approximately 0.10 mile north of the Rt. 29 and Rt. 607 intersection in Greene County, Virginia.
8. "DEQ-NVRO" means the Department of Environmental Quality Northern Virginia Regional Office.
9. "DEQ-VRO" means the Department of Environmental Quality Valley Regional Office.
10. "ACOE" means the United States Army Corps of Engineers, Norfolk District, Western Virginia Regulatory Section.
11. "VWP" mean Virginia Water Protection.
12. "SMP" mean site mitigation plan.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. C. W. Properties owns the Site, a 14.42 acre parcel of land, which it is developing for a shopping center.
2. On August 24, 2007, DEQ-VRO received a complaint from a DEQ-NVRO VWP inspector and the ACOE reporting the potential unauthorized filling of an intermittent stream, two springs and a pond, which are headwaters to an unnamed tributary to Preddy Creek on the Site (construction activity within State waters. The complaint originated from ACOE after its environmental firm conducted a jurisdictional determination for a different project (Greene County Sewer Project II utility project) on an easement that abuts/bisects the Site and observed that the intermittent stream and pond on the Site appeared to be jurisdictional waters/State waters.
3. On August 31, 2007, DEQ staff conducted an inspection of the Site which documented potential unauthorized environmental impacts to State waters from the construction activities. At the time of the inspection the construction activities were on-going and the rough grade appeared to be close to completion. Approximately 480 linear feet of headwater intermittent stream channel and approximately 0.10 acres of open water appeared to be filled or excavated which resulted in adverse environmental impacts by altering the physical, chemical or biological properties of stream without a permit in apparent violation of VA Code 62.1-44.15:5 and 9 VAC 25-210-50 which prohibit such actions without a permit.

4. On September 5, 2007, DEQ staff met with the owner's consultants who provided a complete set of plans including the Site layout, grading plan, road and utility profiles, and the erosion and sedimentation control plan. The Site layout shows normal engineering practices to cap the existing springs with a spring box and a 6 inch drain pipe to drain the water from the Site using a 6 inch PVC spring drain. The erosion and sedimentation ("E&S") plans show the presence of the intermittent stream by the traditional dashed and dotted blue line.
5. The Site's E&S plans, USGS topographic maps (Earlysville quad) and GIS maps of the area all show the apparent presence of an intermittent stream and the topographic map shows a pond on the Site.
6. DEQ issued NOV No. 07-09-VRO-004 to C. W. Properties on October 15, 2007, for conducting in-stream construction, alteration of the stream bed, and filling and excavation on an intermittent stream section without a permit in violation of VA Code 62.1-44.15:5 and 9 VAC 25-210-50 which prohibit such actions without a permit.
7. On November 6, 2007, DEQ met with Mr. Carlyle Weaver, sole proprietor/general manager of C. W. Properties, in an informal conference to discuss the violations cited in the NOV. Mr. Weaver attributed the violations to his reliance on his engineering consultants to develop the Site plans and deal with the environmental permitting issues for the Site. During the meeting, DEQ requested a plan and schedule of corrective actions to address the violations.
8. By letters dated December 4, December 27, 2007 and January 22, 2008, C.W. Properties provided DEQ with a status report on developing its stream mitigation proposal ("SMP") to address the alleged unauthorized impacts.
9. By letters dated February 14, 2008, March 30, April 7, and April 10, 2008, C. W. Properties submitted to DEQ for review and approval a SMP to address the alleged unauthorized impacts to the Site by providing mitigation/compensation for the stream channel impacts and by establishing riparian buffers in an area of an unnamed tributary to Preddy Creek protected by an easement to be granted on the mitigation area.
10. On April 14, 2008, DEQ approved C. W. Properties' SMP. The SMP has been incorporated into Appendix A of the Order.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders C. W. Properties, and C. W. Properties agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders C. W. Properties and C. W. Properties voluntarily agrees, to pay a civil charge of **\$15,600** within **30 days** of the effective date of the Order in settlement of the alleged violations cited in

this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

C. W. Properties shall also include its federal identification number (FIN) with the check, certified check, money order, or cashier's check.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of C. W. Properties, for good cause shown by C. W. Properties, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, C. W. Properties admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. C. W. Properties consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. C. W. Properties declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by C. W. Properties to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein

shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. C. W. Properties shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. C. W. Properties shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. C. W. Properties shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

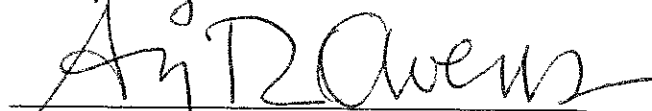
Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which C. W. Properties intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and C. W. Properties. Notwithstanding the foregoing, C. W. Properties agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. C. W. Properties petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
  - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to C. W. Properties.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve C. W. Properties from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of C. W. Properties certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind C. W. Properties to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of C. W. Properties.
13. By its signature below, the C. W. Properties, L.L.C., voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 29 July 2008.

A handwritten signature in black ink, appearing to read "Amy T. Owens", is written over a horizontal line.

Amy T. Owens, Regional Director  
Department of Environmental Quality

C. W. Properties, L.L.C. voluntarily agrees to the issuance of this Order.

By: [Signature]

Title: Manager

Date: 5/21/08

Commonwealth of Virginia

City/County of Culpeper

The foregoing document was signed and acknowledged before me this

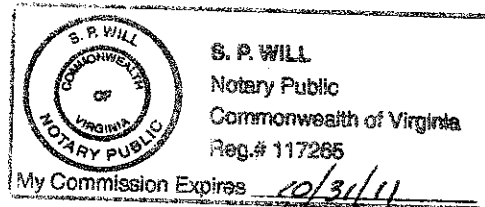
21<sup>st</sup> day of May, 2008, by Carlyle Weaver,  
(name)

who is Manager of C. W. Properties, L.L.C. on behalf of the Company.

(title)

[Signature]  
Notary Public 117265

My commission expires: 10/31/11



**APPENDIX A  
SCHEDULE OF COMPLIANCE  
C. W. PROPERTIES LLC**

1. C. W. Properties shall comply with the provisions contained in the approved SMP. The approved SMP is incorporated herein by reference and is enforceable under this Order. The SMP, which was approved by DEQ on April 14, 2008, incorporates a mitigation/compensation area, addresses the unauthorized impacts to approximately 480 linear feet of the unnamed tributary to Preddy Creek at the Site. The mitigation/compensation area is located approximately 1.7 miles southeast of the Site and bounds an agricultural pasture and a grazed wooded grove along Preddy Creek in Greene County. The SMP includes stream restoration, stream bank enhancement and riparian buffer enhancement, and the protection, in the form of a restrictive easement, of 750 linear feet of stream channel divided into two segments.

In addition to the dates in the SMP, C. W. Properties shall also do the following:

2. **Within 60 days** of completing plantings in the mitigation/compensation area, but **no later than March 1, 2009**, C. W. Properties shall submit to DEQ a survey and plat of the SMP's mitigation/compensation area as performed and certified by a licensed land surveyor or professional engineer. Surveys or plans of the mitigation/compensation area shall be recorded with a preservation instrument and proof of recordation submitted to DEQ.
3. **Within 60 days** of completing the mitigation/compensation project, but **no later than May 1, 2009**, C. W. Properties shall prepare and submit the as-built ground survey report for the mitigation/compensation project to show changes or deviations from the approved SMP.
4. C. W. Properties shall continue the success monitoring of the mitigation/compensation area as presented in the approved SMP and shall submit annual reports **by December 31** of each year in accordance with the approved SMP.
5. C. W. Properties shall submit quarterly progress reports to DEQ, with the first report being due **July 10, 2008**. Subsequent Progress Reports will be due by **October 10, January 10, April 10, and July 10**, until the cancellation of the Order. The quarterly progress reports shall contain:
  - a. a summary of all work completed since the previous progress report in accordance with this Order;
  - b. a projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
  - c. a statement regarding any anticipated problems in complying with this Order.



6. **No later than 14 days** following a date identified in the above schedule of compliance C. W. Properties shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.